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Let the Ideas Flow

One morning in October 1981, Rep. Don Edwards (D-Calif.), who considers James Madison and Thomas Jefferson to be among his constituents, was uncharacteristically depressed. The House, by 354 to 56, had passed the Intelligence Identities Protection Act, which University of Chicago law professor Philip Kurland called "the clearest violation of the First Amendment attempted by Congress in this era."

Among other things, the act made it a crime to publish information that could lead to the identification of covert intelligence agents, even if—and this was a first in American history—the information had already been in the public domain. The day after the act swept through the House, Don Edwards told me, "During the vote, I looked around and saw alumni of some of the best law schools—Harvard, Yale, Berkeley and my own law school, Stanford. They were voting without any understanding of the First Amendment. That shocked me."

More recently, it looked for a while as if certain future alumni of Georgetown University Law School might have been among future congressmen ignorant of the essence and spirit of the First Amendment. Last November, a majority of the editorial board of the Georgetown Law Journal voted not to renew the subscription of the University of South Africa, a public, racially discriminatory institution.

The majority explained this move by saying that anyone who does business with the apartheid state, whether that business is the sale of "machine guns or law reviews," must evaluate the morality of what he is doing. As for themselves, these law students had found they could not in good conscience "continue a consensual contractual relationship with a university that is an arm of a racist and repressive government."

SWEET LAND OF LIBERTY

A saving minority of associate editors on the law journal began campaigning to reverse the decision. After all, the Georgetown dissenters pointed out, "South Africans probably experience enough censorship without our 'help.'"

The dissenters also suggested that the moral majority on the editorial board might henceforth want to carefully screen new subscribers to make sure that none has such offensive ideas that he should be disqualified from taking out a subscription. For instance, they said, what if checks came in from the FBI, the CIA, the Supreme Court of the Philippines or the American Enterprise Institute?

"It's not so funny," a Georgetown University law professor said to me. "If a scholar wants to submit an article, will he or she now have to wonder if it will be accepted or rejected on the basis of whether its political ideology is 'correct'?"

I asked a leading American anti-apartheid strategist, Randall Robinson, executive director of TransAfrica, what he thought of the civil war at the Georgetown Law School. "While I applaud students' struggling to be principled," Robinson said, "I have problems with the specific action taken. The divestment movement is intended to cover only investments in South Africa, not ideas. We need a free flow of ideas. As a matter of fact, South Africa can only benefit from knowing what is thought about it by American law students and scholars. I like the idea in The Washington Post editorial which suggested sending to the University of South Africa hundreds—I would say thousands—of free copies of an issue of the Georgetown Law Journal focusing on South Africa."

Meanwhile, the sons and daughters of James Madison on the editorial board—aided by a series of articles on the dispute in the National Law Journal—kept pressing to make the "spirit of the First Amendment" whole again at their journal. At last, an amendment to the constitution of the Georgetown Law Journal has been passed by the full staff membership. From now on, the journal will "not consider the political, ideological or religious views of present or prospective subscribers in deciding whether to terminate, initiate or review subscriptions."

"Well," a Georgetown law professor, Eleanor Holmes Norton, says, "I can say the students have certainly learned something from all of this."

Norton, a renowned civil libertarian, former head of the Equal Employment Opportunity Commission and active in various anti-apartheid operations, told me about an intriguing hypothesis with which she was recently confronted at a meeting of the Association of American Law Schools. A South African law professor, known to be a supporter of apartheid, who is also an expert on contract law, wants a position at an American law school. Should he get an appointment on the basis of his acknowledged expertise in his specialty? Eleanor Holmes Norton thinks he should. The principle is called academic freedom.

Perhaps this might be debated in the issue of the Georgetown Law Journal to be sent free to the University of South Africa. Along with the idea of having Prof. Norton invited to that university to lecture on her specialty—freedom.